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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,639	07/08/2003	John Stephenson Neel	P1381D1	1426

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EXAMINER

PATEL, KIRAN B

ART UNIT PAPER NUMBER

3612

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/615,639	<b>Applicant(s)</b> NEEL, JOHN STEPHENSON	
	<b>Examiner</b> Kiran B. Patel	<b>Art Unit</b> 3612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 7-25 is/are pending in the application.
- 4a) Of the above claim(s) 12 and 14-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### **Final Rejection**

#### **Election/Restriction**

1. Applicant's election without traverse of Group I, claims 7-13 is acknowledged.

Claims 14-25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim.

During a telephone interview with Mr. Boys the election was further amended and figures 4-5 were elected for prosecution.

Amended figure 5 shows that claim 12 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the airfoil claimed originally was a fixed airfoil shown in Fig 4-5.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 12 withdrawn from

consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP404056631A in view of Kinford, Jr. (4,357,045).

Regarding claims 7-8, JP404056631A discloses in Fig. 1-5 the invention as claimed to include an airfoil 10, a windshield 14, a base foil, Fig 1-5, an upper foil, Fig 1-5, and a plurality of support fins, Fig 1-5.

However, JP404056631A does not disclose a plurality of support fins creating a plurality of separate airflow channels.

Kinford, Jr. (4,357,045) discloses in Fig 1-6 a plurality of support fins 50 creating a plurality of separate airflow channels Fig 5 with upward curvature.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention, as disclosed by JP404056631A, to include a plurality of support fins creating a plurality of separate airflow channels with upward curvature, as disclosed by Kinford, Jr. (4,357,045) to redirect the airflow in a path substantially parallel to the windshield, forming a bug shield of moving air.

3. Claim 9-11, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP404056631A in view of ordinary skill in the art.

Regarding claim 9-11, 13 JP404056631A discloses the invention as claimed.

However, JP404056631A does not disclose the airfoil is formed of one/two polymer piece in a molding operation; the airfoil is formed of aluminum; and the base foil has at least two windshield support feet.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to the airfoil is formed of one/two polymer piece in a molding operation; the air foil is formed of aluminum; and the base foil has at least two windshield support feet, since it has been held to be within the general skill of

a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ416.

### **Response to Arguments**

Applicant's arguments with respect to elected claim have been considered but are moot in view of the new ground(s) of rejection.


### **Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

2. Any inquiry concerning this communication or earlier communications should be directed to Primary Examiner Kiran B. Patel whose telephone number is 703-305-0254. The examiner can normally be reached on M-F from 8:00 to 5:00. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

  
Kiran B. Patel, P.E.  
Primary Examiner  
Art Unit 3612  
September 6, 2004